

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHELE CHERIE CHAPMAN
MOORE,

Plaintiff,

v.

JOYCE PLOCK, et al.,

Defendants.

8:09CV285

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Motion for Leave to Appeal In Forma Pauperis. (Filing No. 10.) On October 19, 2009, the court dismissed Plaintiff's claims without prejudice and entered judgment against Plaintiff. (Filing Nos. 6 and 7.) On November 20, 2009, Plaintiff filed an untimely Notice of Appeal of the court's Judgment. (Filing No. 8.)

Federal Rule of Appellate Procedure 4(a)(1) requires that the notice of appeal in a civil case be filed within thirty days after judgment is entered. "A timely notice of appeal is both mandatory and jurisdictional." Burges v. Johnson County, Iowa, 79 F.3d 701, 702 (8th Cir 1996). Moreover, an untimely notice of appeal cannot serve as a motion for extension of time to file appeal. Id. However, the district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause. Fed. R. App. P. 4(a)(5)(A)(ii).

On December 10, 2009, Plaintiff filed an Amended Notice of Appeal. (Filing No. 11.) The court liberally construes this Notice as motion for extension of time. However, this Motion does not contain any evidence relating to excusable neglect or good cause. On its own motion, the court will give Plaintiff an additional opportunity to show excusable neglect or good cause.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until January 20, 2010, to submit an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Plaintiff fails to submit such an affidavit by January 20, 2010, Plaintiff's appeal will not be processed.

2. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for affidavit on January 20, 2010.

December 18, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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